



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1996

Mr. Burton F. Raiford
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR96-0138

Dear Commissioner Raiford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37501.

The Texas Department of Human Services ("DHS") received a request for information concerning civil rights complaints against the requestor. You state that DHS will release the majority of the responsive information to the requestor. You object, however, to the release of certain information about job applicants or employees of DHS. You contend that the information is excepted from required public disclosure under section 552.101 of the Government Code as it incorporates the doctrine of common-law privacy. You have marked and submitted to this office the information you contend is excepted by privacy.

First, however, we must address the applicability of sections 552.024 and 552.117 of the Government Code. These sections were amended by the Seventy-fourth Legislature to include social security numbers and information revealing whether a government employee has family members. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, §§ 5, 9, 1995 Tex. Sess. Law Serv. 5127, 5130, 5132. In pertinent part, section 552.117 excepts from disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether the following persons have family members: all peace officers, as defined by article 2.12 of the Code of Criminal Procedure; security officers commissioned under Education Code section 51.212; and all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *Id.* § 9, at 5132. Therefore, section 552.117 requires you to withhold the home addresses, telephone numbers, social security numbers, or familial information of officials, employees, or former employees. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the official, employee, or former employee made the request for confidentiality under

section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. Section 552.117 does not apply to an applicant. Open Records Decision No. 455 (1987).

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

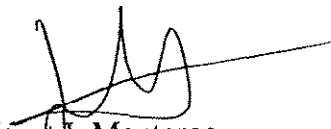
540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. However, *Industrial Foundation* specifically rejected the claim that *all* medical information may be withheld by common-law privacy; individual determinations are required. Open Records Decision No. 370 (1983).

We have reviewed the information you marked and submitted for our consideration. Although we generally agree with your markings, we do not agree that factual information about an employee taking sick leave is protected under common-law privacy. *See generally* Attorney General Opinion JM-229 (1984) (only specific illness, injury, and examination facts are protected from disclosure under common-law privacy); Open Records Decision Nos. 262 (1980) (emergency medical service reports which provide little medical detail are not ordinarily excepted by right of privacy), 258 (1980) (same). However, information concerning illnesses, operations, and physical handicaps of applicants is protected by common-law privacy. Open Records Decision No. 455 (1987) at 9. Accordingly, we have marked the information that must be withheld under common-law privacy as incorporated by section 552.101.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/LBC/ch

Ref: ID# 37501

Enclosures: Marked documents

cc: Ms. Linda Bergmann
Fiscal Management Services
(via facsimile 438-3061)
(w/o enclosures)